

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

WINTHROP HOUSE ASS'N, INC. :
 :
 v. :
 :
BROOKSIDE ELM :
LIMITED PARTNERS, ET AL. :

CIVIL NO. 3:00CV328 (AHN)

RULING AND ORDER

On June 29, 2001, this case was referred to a magistrate judge for a recommendation on a single narrow issue: "Did the Declarant properly exclude the implied warranties and/or express warranties?" On December 29, 2003, the magistrate judge reported that the declarant, Brookside Elm Limited Partners ("Declarant") (1) sufficiently disclaimed implied warranties under the Connecticut Common Interest Ownership Act ("CIOA") and (2) could not disclaim express warranties under the CIOA. She also concluded that the plaintiff, Winthrop House Association ("Association") did not have standing under the New Home Warranty Act ("NHWA") and thus did not consider whether warranties were effectively disclaimed under that statute. The Association objects to the magistrate judge's findings that CIOA implied warranties were effectively disclaimed and that it does not have standing under the NHWA. For the following reasons, the court sustains the Association's objections to those findings.

FACTUAL AND PROCEDURAL BACKGROUND

This action involves the conversion of Winthrop House, a six-story apartment building located in Greenwich, Connecticut, to a residential condominium complex containing forty-seven units. Winthrop House was built in 1938 and originally contained fifty-three apartments. In 1993, the Declarant purchased Winthrop House to renovate and convert to a condominium. Renovations began on the building in 1994. In 1995, the Declarant converted the building into a common interest community under the CIOA and in connection therewith prepared a Public Offering Statement ("POS"). Every prospective purchaser of a unit was given a copy of the POS. Prospective purchasers who were residents of New York state were also given a copy of the New York Supplement ("N.Y. Supplement") to the POS. Everyone who received a copy of the POS and the N.Y. Supplement signed a document acknowledging that he or she reviewed it and agreed to its terms. Forty-five of the forty-seven units had been sold by the time the original complaint was filed in this action.

The Association, on behalf of the forty-five original purchasers and all subsequent unit owners, instituted this action in May 2000, alleging a civil RICO violation and pendent statutory and common law claims under Connecticut and New York law. In the complaint, the Association alleges, inter alia, that at the time the units and common elements were conveyed, there were numerous defects and structural problems with the building

and its components, including the exterior facade, the roof, the HVAC system and the elevator, as well as many building and fire code violations. It claims, inter alia, that those defects and violations breached express and implied warranties under the two Connecticut statutes that govern warranties for condominium conversions, the CIOA, Conn. Gen. Stat. §§ 47-200 et seq., and the NHPA, Conn. Gen. Stat. §§ 46-116 et seq.

After the complaint was filed, the parties agreed to submit the Association's claims to mediation. During the course of the mediation it became apparent that advice on the issue of whether express and/or implied statutory warranties had been excluded would help move the mediation forward. The parties turned to the court for advice on this issue and the court referred the matter to the magistrate judge for consideration of the narrow legal issue of whether the Declarant properly excluded express and/or implied warranties. To determine that question, the parties stipulated that the relevant documents were the POS, the N.Y. Supplement, the Purchase Agreement, and the Limited Warranty Administration Program.

STANDARD OF REVIEW

Pursuant to the Federal Magistrates Act, 28 U.S.C. §§ 631-639, the district court is not bound by the opinion or recommendations of a magistrate judge on a dispositive matter referred pursuant to 28 U.S.C. § 636(b). If a party timely objects to all or part of the magistrate judge's recommendations,

the district court makes a de novo determination of those portions of the report. See 28 U.S.C. § 636(b)(1). Regardless of whether objections are made, the district judge may accept, reject, or modify, in whole or in part, the magistrate judge's findings and recommendations. See id.

DISCUSSION

The CIOA, which is modeled on the Uniform Common Interest Ownership Act, was enacted in 1984 to provide "prospective unit owners and unit owners' associations with consumer protection rights such as disclosure and warranty rights." Willow Spring Condo. Ass'n, Inc. v. Seventy BRT Dev. Corp., 245 Conn. 1, 4 n.1 (1998) (citing Conn. J. Standing Comm. Hearings, Judiciary, Pt. 6, 1983 Sess., pp. 1821-23). The CIOA governs the rights and obligations of parties regarding the financing, construction, organization, sale, and management of common interest communities. See id.

The NHPA governs warranties in connection with the sale of newly constructed dwellings and "any conversion condominium unit . . . and any fixture or structure which is made a part thereof at the time of . . . conversion." Conn. Gen. Stat. § 47-116.

The CIOA and the NHPA are remedial, consumer protection statutes that must be liberally construed in favor of purchasers and strictly against sellers. See Linden Condo. Ass'n v. McKenna, 248 Conn. 575, 592-93 (1999). Indeed, with specific regard to the CIOA, the Connecticut Supreme Court has required

strict compliance with the Act's technical details. See Hall Manor Owners Ass'n v. City of West Haven, 212 Conn. 174, 153-54 (1989). Based on these general principles, the provisions of the NHPA and the CIOA, and case law interpreting these statutes, the court concludes that the Declarant's warranty disclaimers do not satisfy the strict requirements of the CIOA and the NHPA. In addition, the court concludes that the Association has standing under the NHPA to sue in a representative capacity on behalf of at least two or more unit owners.

I. The Association's Standing

Pursuant to the CIOA, a condominium association is given the power to institute litigation "in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community." Conn. Gen. Stat. § 47-244(a)(4). This statutory grant of authority to a condominium association is not limited to actions under the CIOA. Cf. Candlewood Landing Condo. Ass'n v. Town of New Milford, 44 Conn. App. 107, 111 (1997) (holding that a condominium association has standing to bring a tax appeal on behalf of unit owners even though the statute governing tax appeals does not expressly so provide because § 47-244(a)(4) authorizes an association to act in a representative capacity without exception or limitation); see Caswell Cove Condo. Ass'n, Inc. v. Milford Partners, Inc., 58 Conn. App. 217 (2000) (holding that a condominium association has standing to institute an action to quiet title). As the appellate court

noted in Candlewood Landing, to hold that an association does not have standing to act in litigation in a representative capacity in matters affecting the condominium community would amount to "judicial legislation" amending § 47-244(a)(4) "by adding a clause to the effect that, except for litigation pertaining to tax appeals, a condominium association may act in litigation and administrative proceedings." Id. Likewise, if the court were to adopt the magistrate judge's conclusion, it too would engage in judicial legislation amending the CIOA to provide that, except for claims under the NHTA, a condominium association may act in litigation on behalf of unit owners. See id.; cf. Willow Springs Condo. Ass'n, 245 Conn. at 1 (upholding award of damages to condominium association for breach of express and implied warranties under the CIOA and NHTA without questioning the Association's standing under the NHTA).

Accordingly, the Association's objections to the magistrate judge's conclusion that it does not have standing under the NHTA is sustained, and this court will consider de novo whether the warranty disclaimers satisfy the provisions of the NHTA.

II. Warranty Disclaimer Provisions of the NHTA and the CIOA

The NHTA has strict requirements for disclaiming express and implied warranties. Specifically, NHTA warranties cannot be excluded or modified in a contract of sale. They may only be excluded or modified after a contract of sale is executed and must be contained in a separate written instrument that is signed

by the purchaser and that (1) sets forth in detail the warranty to be excluded or modified, (2) the purchaser's consent to such exclusion or modification, and (3) the terms of the new agreement. See Conn. Gen. Stat. § 47-117(c) (express warranties);¹ Conn. Gen. Stat. § 47-118(d) (implied warranties);² see also Beucler v. Lloyd, 83 Conn. App. 731, 737 (2004), cert. dismissed, 273 Conn. 475 (2005); Cafro v. Brophy, 62 Conn. App. 113, 123 (2001). Indeed, as the Connecticut Appellate Court recently noted, "[t]he plain language of both §§ 47-117 and 47-118 expressly provides that no words in the contract of sale shall work to exclude or to modify any warranties created under

¹Section 47-117(c) provides:

No words in the contract of sale or the deed shall exclude or modify any express warranty made pursuant to subsection (a) of this section. Such warranty may, at any time after the execution of the contract of sale be excluded or modified wholly or partially by any written instrument, signed by the purchaser, setting forth in detail the warranty to be excluded or modified, the consent of the purchaser to such exclusion or modification and the terms of the new agreement.

²Section 47-118(d) provides:

Neither words in the contract of sale, nor the deed, nor merger of the contract of sale into the deed is effective to exclude or modify any implied warranty; provided, if the contract of sale pertains to an improvement then completed, an implied warranty may be excluded or modified wholly or partially by a written instrument, signed by the purchaser, setting forth in detail the warranty to be excluded or modified, the consent of the purchaser to exclusion or modification, and the terms of the new agreement with respect to it.

the statutes unless there is a separate agreement on the exclusion or modification." Beucler, 83 Conn. App. at 737 (emphasis in original). Further, a general statement that all warranties are excluded is not sufficient to disclaim NHPA warranties because such language tells the buyer absolutely nothing about the warranties being excluded. See Cafro v. Brophy, 62 Conn. App. at 123 (commenting that a general disclaimer that "buyer accepts home without any warranty express or implied . . . except for a [one-year warranty of the structural integrity of the residence and the operation of major mechanical systems] falls so far short of complying with the disclaimer provision of the statute that it warrants no further discussion.")

Like the NHPA, the CIOA also has specific requirements for disclaiming or modifying implied warranties.³ Specifically, with

³Implied warranties under § 47-276 may be excluded or modified as follows:.

(a) Except as limited by subsection (b) of this section with respect to a purchaser of a unit that may be used for residential use, implied warranties of quality: (1) May be excluded or modified by agreement of the parties; and (2) are excluded by expression of disclaimer, such as "as is", "with all faults", or other language that in common understanding calls the purchaser's attention to the exclusion of warranties.

(b) With respect to a purchaser of a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, but a declarant may disclaim liability in an instrument signed by the purchaser for a specified defect or class

respect to residential condominiums, no general disclaimer of implied warranties is effective. Disclaimers of implied warranties are only effective if they are contained in an instrument, signed by the purchaser, for a specific defect, class of defects or specified failure to comply with applicable law. See Conn. Gen. Stat. § 47-276(b). The CIOA expressly provides that if the condominium is for residential use, implied warranties may not be excluded or modified by agreement of the parties, nor can they be excluded by expressions such as "as is", "with all faults", or other general language. See Conn. Gen. Stat. § 47-276(a).

According to a comment to the Uniform Common Interest Ownership Act ("UCIOA"), which was adopted in Connecticut as the CIOA, the requirement that the disclaimer of each specific defect or specified failure to comply with applicable law be in an instrument signed by the purchaser "is designed to insure that the declarant sufficiently calls each defect or failure to the purchaser's attention and that the purchaser has the opportunity to consider the effect of the particular defect or failure upon the bargain of the parties." See UCIOA, § 4-115 cmt. 4. The Comment further explains that the Act's strict disclaimer

of defects or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain.

requirements "impose a special burden upon the declarant who desires to make a 'laundry list' of defects or failures by requiring him to emphasize each item on such a list and make its import clear to prospective purchasers." Id. For example, "the declarant of a conversion common interest community might, consistent with [§ 47-276], disclaim certain warranties for 'all electrical wiring and fixtures in the building, the furnace, all materials comprising or supporting the roof, and all components of the air conditioning system.'" Id.

There is no provision in the CIOA that provides for the exclusion or modification of express warranties created by Conn. Gen. Stat. § 47-274.

III. Exclusion of Warranties By the Declarant

The magistrate judge concluded that the Declarant sustained its heavy burden of proving that it effectively and properly disclaimed any implied warranties under the CIOA. She identified provisions in the POS, the Architect/Engineering Report, the Limited Warranty Administration Program, and the Purchase Agreement that comply with the statutory requirements. Contrary to the magistrate judge's findings, this court concludes that there is no document that complies with the very detailed warranty disclaimer requirements of the CIOA and the NHPA.

A. Disclaimers in the POS

The court finds that Paragraphs 2(c) and 10 of the POS do not constitute valid NHPA and CIOA warranty disclaimers.

1. Paragraph 2(c) of the POS provides:

(c) The Declarant has also begun to have repaired and rehabilitated portions of the Common Elements. . . . All repair and rehabilitation work will be done at the sole discretion of the Declarant. The Declarant makes no representation as to the specific repair and rehabilitation work to be done or as to the date of completion of any such work. . . . The Declarant discloses that there is no schedule of such rehabilitation.

This paragraph does not operate as a warranty disclaimer under the NHTSA because it does not set forth in detail the warranty that is being excluded, is not a separate, signed document executed after the contract of sale, and does not set forth the terms of the new agreement. See §§ 47-117(c), 47-118(d). In fact, it does not tell the purchaser anything at all about the warranties that are being disclaimed.

Likewise, this paragraph does not satisfy the CIOA's requirements because of its general language and because it does not identify any specific defect or class of defects or code violation for which warranties are excluded.

2. Paragraph 10A of the POS contains a verbatim recitation of the provisions of Conn. Gen. Stat. § 47-274 (the CIOA's provisions regarding the creation of express warranties of quality), a verbatim recitation of Conn. Gen. Stat. § 47-275 (the CIOA's section governing the creation of implied warranties of quality), and a verbatim recitation of Conn. Gen. Stat. § 47-276 (the CIOA's section pertaining to the exclusion or modification of implied warranties of quality). Paragraph 10B of the POS sets

forth a verbatim recitation of the provisions of the NHPA that pertain to warranties: Conn. Gen. Stat. § 47-116 (definitions), 47-117 (express warranties), and § 47-118 (implied warranties). Immediately following these statutory provisions, the POS contains the following provision entitled "LIMITATIONS ON WARRANTIES":

PURSUANT TO SECTIONS 47-276(b) AND 47-118(d) OF THE CONNECTICUT GENERAL STATUTES, THE DECLARANT WILL INCLUDE IN ITS PURCHASE AGREEMENT THE FOLLOWING PARAGRAPHS WHICH PROVIDE THAT CERTAIN OF THE WARRANTIES DESCRIBED ABOVE ARE EXCLUDED:

1. THE IMPLIED WARRANTIES OF SECTIONS 47-275(b) AND 47-118(A) THAT THE IMPROVEMENTS ARE: (1) FREE FROM FAULTY AND/OR DEFECTIVE MATERIALS, (2) CONSTRUCTED IN ACCORDANCE WITH APPLICABLE LAW AND ACCORDING TO SOUND ENGINEERING AND CONSTRUCTION STANDARDS, (3) CONSTRUCTED IN A WORKMANLIKE MANNER, AND (4) FIT FOR HABITATION ARE EXCLUDED TO THE EXTENT THE IMPROVEMENTS ARE COMPLETED AS OF THE DATE OF THE PURCHASE AGREEMENT. SPECIFICALLY, THE DECLARANT MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO ANY STRUCTURAL COMPONENT OF THE BUILDING; THE EXTERIOR FACADE OF THE BUILDING; THE ROOF; THE BOILERS OR ANY OTHER PART OF THE HEATING SYSTEM; THE ELECTRICAL SYSTEM, THE HOT WATER SYSTEM, OR THE PLUMBING SYSTEM OR ANY PART OF ANY SUCH SYSTEMS; OR WITH RESPECT TO ANY KITCHEN CABINETS, CARPETING, TILING, WALLPAPER, PAINT OR OTHER SURFACE FINISHINGS OF ANY KIND, WOODWORK, BATHROOM FIXTURES, OR UTILITY FIXTURES OR OUTLETS.

. . .
4. THE PURCHASER ACKNOWLEDGES BY SIGNING THIS PURCHASE AGREEMENT THAT THE PURCHASER AGREES TO AND UNDERSTANDS THE AGREED TO AS PART OF THE BASIS OF THE PURCHASER'S BARGAIN IN PURCHASING THE UNIT.

. . .
NO ADDITIONAL EXPRESS OR IMPLIED WARRANTIES, UNLESS REQUIRED BY LAW, ARE MADE BY THE DECLARANT.

This portion of the POS does not satisfy the strict

disclaimer requirements of either the NHPA or the CIOA. These statutory warranties cannot be disclaimed by merely listing the various building systems and components for which no representation or warranty is given. Because this provision does not specify each defect or class of defect (i.e., the leaks in the roof), or failure to comply with applicable law (i.e., that the sprinkler system violates the Greenwich fire code) for which no warranty is given, it is inoperative as a warranty disclaimer under the CIOA. See § 47-276(b). Moreover, the "laundry list" contained in this provision is not like the one approved in Comment 4 to the UCIOA because it does not emphasize each defect or failure that is not covered by any warranty and does not make clear to prospective purchasers the import or consequences of such warranty exclusion. See UCIOA, § 4-115 cmt 4. Unlike the example approved in the Comment, the Declarant's laundry list does not state that warranties were disclaimed for, i.e., "all electrical wiring" or "all materials comprising or supporting the roof." Rather, the Declarant's laundry list states, in impermissibly general language, that, i.e., no warranties are given with respect to "the electrical system . . . or any part of such system" and "the roof." Further, the Declarant's statement that it "makes no representation or warranty whatsoever with respect to any structural component of the building" is not sufficient because such general language is not permitted by § 47-276.

Although the language in this section of the POS arguably might comply with the NHTA's disclaimer requirements because the warranties being excluded are identified by name, it is not otherwise compliant because it does not provide any details of the warranties being excluded. See §§ 47-117(c), 47-118(d). It also does not satisfy the NHTA's other requirements because it is not in a separate agreement executed after the contract of sale, see Beucler, 83 Conn. App. at 737, and does not set forth the terms of the new agreement.

B. Disclaimers in the Architect/Engineering Report

The court also finds that the Architect/Engineering Report dated December 28, 1994, prepared by Preiss/Breismeister, P.C., Architects, which was attached to the POS as Exhibit G, does not constitute a valid disclaimer of any implied or express warranty under either the NHTA or the CIOA.

This document sets forth 38 building components and for each component describes its condition, the approximate date of its installation or construction, its useful life, and its replacement cost. It also contains the following language as a summary of the building's condition:

The building is in generally good original condition. . . . Electrically, the entire building should be upgraded, as well as, [sic] the fire alarm and smoke systems. There are a number of issues which do not meet current codes, many of which would be considered "grandfathered" and allowed to remain unchanged provided there are no renovations to these portions of the building. There are certain life safety issues which may be required to be updated by code and by law (such as smoke detection). There are other issues which

must be "repaired" such as the cracks, leaks, door operation, etc. Other repairs will be required very shortly and should be made as a part of a preventative maintenance program - reroofing, plumbing traps, etc.

It further states that it is "based upon observations of the visible and apparent condition of the building and its major components on the date of inspection" and warns that "[t]here may be other hidden or partially hidden problems with the building structure and/or systems."

Although this document describes the condition of the building, identifies certain defects, and states that there were code violations and in so doing gives purchasers notice of the overall condition of the building and many of its patent defects, "it is not knowledge of existing defects that is material, but rather the awareness of the significant financial exposure a buyer faces by reason of disclaimer." See Marina Cove Condo. Ass'n v. Isabella Estates, 34 P.3d 870, 876 (Wash. Ct. App. 2001). The fact that this document may have put purchasers on notice of the building's condition and of its defects and possible code violations does not put purchasers on notice that any and all warranties that might cover those defects and code violations were disclaimed by the Declarant.

The document also does not comply with the strict requirements of the NHPA and the CIOA because it does not identify the express or implied warranties that the Declarant is excluding, see §§ 47-117(c), 47-118(d), or the specific defect or

class of defects or specific code violations which are not covered by any implied warranty, see § 47-276(b), is not a post-contract document signed by the purchaser, see Beucler, 83 Conn. App. at 739, and does not set forth the terms of the new agreement. See §§ 47-117(c), 47-118(d).

C. Limited Warranty Administration Program Disclaimer

_____The Limited Warranty Administration Program for Winthrop House is also not a valid warranty disclaimer. This document consists of four "Warranty Work Request Forms" that unit owners were to use to request warranty work at closing, 14 days after closing, 60 days after closing and 1 year after closing. Each form states:

Pursuant to the Warranty Program described in our Purchase Agreement and the Public Offering Statement, the terms of which (I) (We) hereby accept and agree to, (I) (We) request completion or repair of the following warranty items, without limiting our rights to submit subsequent requests under the Warranty Program.

Each unit purchaser signed a blank warranty work request form at closing and was given an opportunity to list any items for which repair work was requested.

While this is a post-contract of sale document that was signed by purchasers, it does not constitute a valid warranty disclaimer under either the CIOA or the NHPA because it does not identify any specific defects or code violations that are not covered by any warranty, see 44 47-276(b), and does not identify

the warranties that are excluded. See §§ 47-117(c), 47-118(d). It tells the purchaser absolutely nothing about the exclusion or modification of express and implied warranties or the import or consequences of such exclusion or modification.

D. Disclaimers in the Purchase Agreement

The following provisions of the purchase agreement also do not satisfy the statutory requirements for disclaiming warranties:

1. Paragraph 12 - Limited Warranties - provides:

Portions of the Unit, Common Elements and Limited Common Elements have already been completed. Buyer has inspected those portions to the extent desired by Buyer and agrees to accept them "as is" in their existing condition subject to normal wear and tear between now and the time of closing. Seller makes no warranties except those specifically required under [Sections 47-274 to 47-277, if any] as more fully described in the Limited Warranty Administration program set forth in the Public Offering Statement at Exhibit H.

All implied warranties are hereby disclaimed and excluded with respect to defects which exceed the specific standards of the Limited Warranty Administration program (the "Warranty Standards"), and Buyer consents to the exclusion of implied warranties exceeding said specific standards from whatever source. Buyer agrees that the price paid contemplates this exclusion.

The general language in this section of the purchase agreement stating that "[b]uyer agrees to accept [the completed portions of the unit and common elements] "as is" and that "all implied warranties are hereby disclaimed and excluded . . . and Buyer consents to the exclusion . . . ," is not sufficient under the NHWA because it does not set forth in detail the warranties

being excluded or the terms of the new agreement. See §§ 47-117(c), 47-118(d). This general language does not tell the purchaser anything about the warranties being excluded and does not specify which implied warranties, i.e., the warranty of habitability, the warranty that the building is constructed according to sound engineering standards and in a workmanlike manner, and the warranty that the building is free of faulty materials, are excluded. See id. It is also insufficient because it is contained in the contract of sale -- it is not a separate, signed agreement that was executed after the contract of sale. See Beucler, 83 Conn. App. at 737.

It is not a sufficient disclaimer of implied warranties under the CIOA because of its general language and because it does not identify the specific defects or code violations that are not covered by any warranty. See § 47-276.

2. Paragraph 17 - Important - states:

Receipt of a copy of the Public Offering Statement for Winthrop House not later than the date set forth above is hereby acknowledged and Buyer understands that the Statement should be examined.

. . .
It shall be acknowledged that Buyer is relying on the disclosures, Descriptions and Representations made in the Public Offering Statement and this Agreement as the basis for this purchase, and not any representations, inferences or understandings not in these documents.

This boilerplate language does not constitutes an effective disclaimer of any warranty under either the NHTA or the CIOA. Language disclaiming NHTA warranties is not effective if it is

contained in the contract of sale. See §§ 47-117(c), 47-118(d). Moreover, there is nothing in this provision that identifies any warranty that is being excluded. See id. It is not an effective warranty disclaimer under the CIOA because of its general language and because it does not identify a specific defect, class of defect or code violation for which no warranty is given.

3. Paragraph 24 - Acknowledgments - provides:

Buyer acknowledges that he has read this Agreement and that he understands its terms. Buyer further acknowledges that prior to the date hereof Buyer received a copy of the Public Offering Statement for Winthrop House. . . . This Agreement, together with any exhibits attached hereto or to the Public Offering Statement, contains the entire Agreement of the parties and no oral representations of statements, . . . shall be considered binding upon either of the parties. Except as otherwise specifically provided herein, this Agreement shall not be terminated, modified or waived except by a writing signed by both parties.

This paragraph of the Purchase Agreement also does not constitutes a valid warranty disclaimer under either the NHWA or the CIOA. It does not effectively disclaim warranties under the NHWA because it is contained in the contract of sale, not in a separate, signed, post-contract of sale agreement, and does not set forth in detail the warranty being excluded. See §§ 47-117(c), 47-118(d). It does not effectively disclaim warranties under the CIOA because of its general language and because it does not identify a specific defect, class of defect or code violation for which warranties are excluded.

In sum, not one of the provisions in these documents comply

with the strict disclaimer requirements of the NHTA and the CIOA. With regard to the NHTA, there is no separate, post-contract instrument, signed by the purchaser that sets forth the details of the warranties being excluded, the terms of the new agreement and the purchaser's consent. See §§ 47-117(c), 47-118(d); Beucler, 83 Conn. App. at 739. Indeed, none of the language in any of the documents show that the purchaser knowingly relinquished his statutory warranty rights. See Caifro, 62 Conn. App. at 123 (citing Crawford w. Whittaker Constr., 772 S.W.2d 819, 822 (Mo. App. 1989) ("One asserting a disclaimer of the warranties implied by public policy in a new home purchase must establish that such protections were knowingly relinquished as a result of a bargain in fact, i.e., an agreement reached through discussion and negotiation, and boilerplate clauses in a form contract alone do not establish these requirements.")).

Neither the NHTA nor the CIOA can be read, as the Declarant seems to argue, as permitting a valid warranty disclaimer to consist of various provisions in separate documents that, when added together or combined might contain the statutory requirements, even if some or all of the documents containing the various provisions incorporate by reference the other documents. Construing the NHTA and the CIOA in such a manner is not warranted by the clear and unambiguous language of these statutes or the case law, which evidences a great deal of judicial hostility toward warranty disclaimers in Connecticut as well as

in other states. Accord Cafro, 62 Conn. App. at 123 n.6 (citing cases); see also e.g., Starfish Condo. Ass'n v. Yorkridge Service Corp., 458 A.2d 805, 810 (Md. 1983) (requiring disclaimers to expressly name the warranty being excluded, i.e., "warranty of habitability"); Pontiere v. James Dinert, Inc., 627 A.2d 1204, 1207 (Pa. Super. Ct. 1993) (holding that a builder/vendor may not exclude the implied warranty of habitability without using specific language designed to put the buyer on notice of the rights he is waiving); Riverfront Lofts Condo. Owners Ass'n v. Milwaukee Riverfront Prop. Ltd. P'ship, 236 F. Supp.2d 918 (E.D. Wisc. 2002) (noting the high standards court have set for disclaiming implied warranties).

Accordingly, the Association's objection to the magistrate judge's recommendations on the issue of warranty disclaimers is sustained.

IV. The Magistrate Judge's Other Recommendations

In addition to the referred issue regarding the adequacy of the Declarant's warranty disclaimers, the magistrate judge expanded the scope of the referral by considering whether the POS complied with the CIOA, whether the Declarant made any express warranties, whether any express warranties were created by the building plans and specifications, whether subsequent unit purchasers had any warranty rights under the NHPA, whether the Association could enforce express warranties contained in an exhibit to the N.Y. Supplement, whether the Association had any

right to enforce warranties in a document referred to as the "Sorrow Rider II," and whether damages for breach of warranties that were made to some, but not all purchasers should be apportioned. While the Association timely objected to many of the magistrate judge's recommendations on these issues, the court declines to address its objections. Because these issues were beyond the scope of the referral, this court finds that the better approach is to decline to adopt the recommendations as to these issues in their entirety. In so doing, the magistrate judge's recommendations will not have the force of law. See Continental Cas. Co. v. Dominick D'Andrea, Inc., 150 F.3d 245, 249 (3d Cir. 1998) (noting that a magistrate judge's opinion on dispositive issues is only a recommendation and does not have the force of law unless and until the district court enters an order accepting it). And thus, if necessary, the issues can be litigated de novo at a future time, when they are properly before the court either by motion or at trial.

CONCLUSION

For the foregoing reasons, the court adopts the magistrate judge's conclusion that express warranties cannot be disclaimed under the CIOA. The court declines to adopt the remaining portions of the recommended ruling. The court sustains the Association's Local Rule 72.2(a) Objection [doc. # 57] in part and holds that the Association has statutory authority to act on behalf of itself and unit owners in actions under the NHTA, and

with regard to the certified question, the court finds that the Declarant did not effectively disclaim express and implied warranties under either the NHTA or the CIOA.

The parties are directed to resume their mediation efforts and to file a status/progress report with the court by September 30, 2005.

SO ORDERED this 24th day of June, 2005, at Bridgeport, Connecticut.

/s/ _____
Alan H. Nevas
United States District Judge